IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTIION

Writ Petition No.3457 of 2007

Kum.Swapnil @ Sushma Mahadeo Desai ..Petitioner

vs.

Vasanti Mahaseo Desai ..Respondent

Shri Umesh Manakapure for petitioner.
Shri A.M.Khandekar for respondent no.1.
Shri M.S.Topkar for responeent no.2

CORAM: S.C.DHARMADHIKARI J.
27th NOVEMBER, 2007

P.C.

1. Rule. Learned Counsel appearing for the respondents waive service. Rule taken up for final hearing by consent.

2. The impugned order rejects the Misc.Civil Application No. 270 of 2005 seeking appointment of the petitioner before me as guardian of the minor Swapnil Mahadeo Desai. The petitioner Balasaheb Basappa alias Basgonda Desai is the uncle of the guardian. The father of the minor was his brother. The brother met with an accident and since then the grand father so also the present petitioner Balasaheb are taking care of the minor Swapanali. The first respondent is the mother of the minor but she has left the

child in custody of the grand father/deceased on account of marriage between the deceased and herself being dissolved by consent of parties as early as on 12th July, 1995. The child who has been residing with the grand father is looked after by him since then. My attention is invited to proceedings in HMP No.37 of 1994 and more particularly the terms wherein the minor who was of two years of age at that time was handed over to the deceased and it was recorded that entire responsibility of maintaining the said minor including her education is that of the deceased.

3. At no time after 12th July, 1995 has the first respondent mother ever came to claim custody of the minor. The date of birth of the minor is 27th June, 1993. The child is about fourteen and half years old. The child is being looked after by the present petitioner. He has applied for being appointed as guardian but that application is rejected by the District Judge and that is how the writ petition.

4. The notice was directed to be issued to the first respondent/wife in the light of conclusions of the learned District Judge that in the life

time of natural mother, it was not possible to consider the petitioner's application. However, though notice is duly served, respondent no.1/wife has not bothered to remain present before this Court. The office report is clear in this behalf. She was absent in the Trial Court also is what is urged by Shri Manakapure.

5. On 21st August, 2007 this Court directed the employer of deceased Mahadeo to be impleaded party respondent and notice be issued to it. Accordingly, employer has been impleaded and Shri Topkar has filed his appearance for employer Padam Bhushan Vasantdada Ayurvedic Medical College and Institute of Yoga, Sangli where the deceased was employed. He has earned pension as also there are terminal benefits. In such circumstances, interest of justice would be subserved if the application made before the Trial Court by the present petitioner is granted. What is paramount in all these matters is interest and welfare of the minor. There are no denials of the averments in the application of the uncle of the minor. The minor has been taken care of by uncle right through out. There is no complaint of her being ill treated or not looked

after either. The Trial Court has not concluded that appointing the uncle as guardian of the minor would not be in the interest or welfare of the child. In such circumstances, the application made by the petitioner is made absolute. The petitioner Balasaheb Basappa alias Basgonda Desai residing at Gadgil Plot no.17, Navyuvak Chowk, Sangliwadi, Taluka Miraj, District Sangli is appointed as guardian of the child Swapanil alias Sushma Mahado Desai in terms of Hindu Minority and Guardianship Act, 1956.

6. In so far as the sum which is due and payable by the employer to the deceased Mahadeo B. Desai in the light of his employment with respondent no.2 is concerned, respondent no.2 is agreeable to deposit all sums due as terminal/retiral dues of the deceased in the District Court at Sangli within a period of four weeks from today. The said amount shall be invested by the said Court in Fixed Deposit initially for a period of three years and to abide by all such and further directions as may be necessary in the interest of justice. The Trial Court to consider the request of the petitioner Balasaheb Desai for disbursing such sums from the interest accrued on the fixed

deposit as are necessary for maintenance and education of the minor. However, the petitioner Balasaheb will be at liberty to apply after the amounts are invested in terms of this order and such application shall be dealt with by the Trial Court on merits and in accordance with law. Rule is made absolute in the above terms with no order as to costs.

(S.C.DHARMADHIKARI J.)